

8 Official Opinions of the Compliance Board 115 (2012)

- ◆ **Compliance Board** – *Authority and Procedures – Opinions*
 - ◇ Disputed issues of fact: cannot be resolved
- ◆ **Quasi-Judicial Function** – *Within the function:*
 - ◇ Determination subject to certain judicial review provisions
- ◆ **Administration Function** – *Within the Exclusion, discussion of:*
 - ◇ Application of existing law to claims against fund administered by the public body

*Topic headings correspond to those in the Opinions Index (2010 edition) at
<http://www.oag.state.md.us/opengov/openmeetings/appf.pdf>

September 26, 2012

Maryland State Board of Morticians and Funeral Directors/ (James J. Doyle)

We have considered the complaint of James J. Doyle, Esq., (“Complainant”), on behalf of the Maryland State Funeral Directors Association, that the State Board of Morticians and Funeral Directors (“State Board”) violated the Open Meetings Act (“the Act”) by holding a closed meeting to discuss claims brought against the Family Security Trust Fund. That fund was established by § 7-4A-03 of the Health Occupations Article (“HO”) to provide redress to victims of theft or embezzlement by funeral directors holding funeral pre-need services accounts, but only for losses that occurred after January 1, 2010. *See* HO § 7-4A-06.

Complainant states that his client learned that the State Board may have granted claims against the fund for losses that occurred before January 1, 2010 and that his client, interested in State Board policies regarding the use of monies in the fund, asserted a request to attend the State Board’s meetings on claims. At the State Board’s July 11, 2012 open meeting, Complainant learned that the State Board would meet again later that day, behind closed doors, to address a claim against the fund. Complainant requested that the meeting be held in the open, or, otherwise, that it be closed pursuant to the Act’s procedures for closing a meeting. Complainant further states his belief that the State Board held that later meeting without following any of the closing procedures stated in State Government Article (“SG”) § 10-508.

The State Board responds that it had scheduled a claims hearing that day, but that it postponed the meeting. As the Complainant points out, the

response provided no information on whether the State Board plans to hold future claims hearings in public. Complainant also states that he was told that a meeting in some form did occur.

As we are not set up as a board authorized to compel the appearance of witnesses, weigh credibility, and resolve disputes in facts, we cannot reach a determination on the accuracy of either version of events. Nonetheless, we can, and do, reach a more general determination that the State Board would not have violated the Act by meeting only to address a claim against the fund. We stress the word “only” and explain.

The Act does not apply to a meeting held by a public body to perform either a “quasi-judicial function” or an “administrative function.” SG § 10-503(a)(1)(iii), (i). The term “quasi-judicial function” includes the determination of . . . a contested case to which [SG §§ 10-201 *et seq.*] applies.” SG § 10-502(i). As the contested case procedures in those Administrative Procedure Act sections apply to a hearing on a claim against the fund, a meeting held by the State Board only to consider such a claim is not subject to the Act.

To fall within an “administrative function, we have explained, “the discussion must involve the administration of an existing law, or a rule, regulation, or bylaw of a public body.” 7 *OMCB Opinions* 250, 253 (2011) (citing SG 10-502(b)(1)).¹ The discussion also must not fall within one of the other functions —*i.e.*, it must not fall into the “judicial,” “quasi-judicial,” “legislative,” or “quasi-legislative” categories of functions. SG § 10-502(b)(2). Here, if claims against the fund were not subject to the contested case provisions of the Administrative Procedure Act, the Board’s proceedings on them would likely fall into the administrative function category. *See* 7 *OMCB Opinions* at 254-55 (explaining the applicability of the administrative function to a commission’s meeting to receive and investigate complaints about dialysis centers; reviewing earlier opinions finding that various boards, when fulfilling a statutory duty to apply existing law to complaints, were exercising an administrative function).

We caution, however, that the administrative and quasi-judicial exceptions only go so far. If a public body’s discussion goes beyond the particular case in question and involves a quasi-legislative or other function subject to the Act, *see* SG § 10-503, the Act will apply. As we have explained:

The “quasi-legislative function” includes the process of adopting or changing “a rule, regulation, or bylaw that has the force of law.” SG § 10-502(j)(1). [D]iscussions about prospective policies and recommendations of future actions on subjects of public concern very seldom, if ever, qualify for the administrative function exclusion. *See, e.g.*, 65 *Opinions of the*

¹ The State’s Open Meetings Compliance Board opinions are available at <http://www.oag.state.md.us/Opengov/Openmeetings/board.htm>

Attorney General 396, 407 (1980) (concluding that the Open Meetings Act applied to the Thoroughbred Racing Board's award of racing dates under the applicable statutes, but not to its discussions on whether to allow racing on Sundays).

7 *OMCB Opinions* at 254. Under the Act, a public body that meets to conduct a quasi-legislative function must give public notice of the meeting and follow the Act's procedures for closing a meeting, when it is permissible to do so under an exception in SG § 10-508(a). It thus behooves the officer who presides over a meeting that is closed to perform a function not subject to the Act to ensure that the discussion does not stray into a function that is subject to the Act.

In conclusion, if a quorum of the State Board convened at all, it did not violate the Act if it convened only to discuss a particular contested case or other claims proceeding and the discussion did not stray into matters subject to the Act. We do not have the authority to address whether other laws or the State Board's regulations or procedures apply to the matter. We also cannot resolve the factual dispute about whether a quorum convened on July 11, 2012.

Open Meetings Compliance Board

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